

APR 28 2009

FILED

STATE OF MINNESOTA
IN COURT OF APPEALS

Peter Freeman, et al.,

Respondents,

vs.

Janette J. Swift,

Petitioner.

ORDER

#A09-599

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Halbrooks, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

Petitioner Janette J. Swift has filed a direct appeal (A09-598) from the district court's order denying a motion to dismiss under Minn. Stat. § 554.02 (2008). Petitioner indicates that she made an alternative motion for summary judgment, on which the district court did not specifically rule. Petitioner seeks discretionary review on that issue.

Petitioner did not provide copies of the motion papers submitted to the district court. And because the district court did not rule on the issue presented by the petition, appellate review is premature. Depending on the outcome of the direct appeal, petitioner will have an opportunity to raise the issue addressed in the petition in the district court, if necessary. And the issue presented would be reviewable on appeal from a final

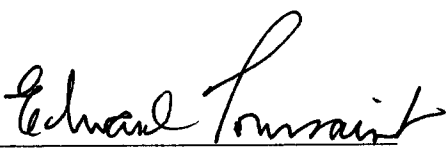
judgment, if necessary. Accordingly, petitioner failed has to establish a compelling reason for this court to extend discretionary review at this time.

IT IS HEREBY ORDERED:

1. The petition for discretionary review is denied.
2. This order shall not be construed as an expression of opinion regarding the issue presented in the petition.

Dated: April 28, 2009

BY THE COURT


Edward Touraint
Chief Judge